

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Mediacom Minnesota LLC	)	CSR-6801-E, CSR-6772-E, CSR-6786-E,
	)	CSR-6779-E
Petition for Determination of Effective	)	
Competition in the Following Minnesota	)	
Franchise Areas: Grove City (CUID MN0326);	)	
Paynesville (CUID MN0980, MN0084); Cook	)	
(CUID MN0917); Tyler (CUID MN0150);	)	
Stewart (CUID MN0663); Winsted (CUID	)	
MN0536)		

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 12, 2007**

**Released: July 13, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom Minnesota LLC (“Mediacom”) has filed with the Commission, pursuant to Section 76.7 and 76.905 of the Commission’s rules, petitions for a determination of effective competition in the following areas in Minnesota: Grove City, Paynesville, Cook, Tyler, Stewart, and Winsted (the “Franchise Areas”). Mediacom claims that its cable systems serving those communities are subject to effective competition pursuant to Section 623(l) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules, and is therefore exempt from cable rate regulation. Mediacom alleges that it qualifies for effective competition because two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV Inc. (“DirecTV”) and DISH Network (“Dish”), offer and provide service to residents in those communities. As such, Mediacom argues that it qualifies for a determination of effective competition based on the “competing provider” test set forth in Section 623(1)(1)(B) of the Communications Act.<sup>2</sup> No oppositions to the petitions were filed.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 543 (l).

<sup>2</sup> See 47 U.S.C. § 543 (l)(1)(B).

<sup>3</sup> On February 23, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petitions, informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association (“SBCA”) report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission’s letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petitions. No opposition to Mediacom’s filing has been received by the Commission.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as the term is defined by Section 623(l) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup>

## II. COMPETING PROVIDER EFFECTIVE COMPETITION

3. Section 623 (l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the cable operator demonstrates that its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to the programming services offered by the MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.<sup>7</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available because of its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>8</sup> Mediacom has provided evidence of DirecTV and Dish's extensive national advertising efforts.<sup>9</sup> As of June 2005, DirecTV and Dish provided service to approximately 26.1 million people, comprising approximately 27.7 percent of all MVPD subscribers nationwide. DirecTV was the second largest MVPD provider, and Dish the third largest during this period.<sup>10</sup> Considering the growth of DBS, and the data discussed below showing that more than 15 percent of the households in the Franchise Areas are DBS subscribers, we conclude that the population of the Franchise Areas may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With regard to program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>11</sup> Mediacom has demonstrated that at least two unaffiliated MVPDs, namely DirecTV and Dish, offer comparable video programming to at least 50 percent of the households in the Franchise Areas. Mediacom also demonstrated that the two DBS firms are physically able to offer MVPD service to subscribers in the Franchise Areas; that there exists no regulatory, technical or other impediments to households within the Franchise Areas taking the services of the DBS providers; and that potential subscribers in the Franchise Areas have been made reasonably aware of the MVPD services of DirecTV and Dish.<sup>12</sup>

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<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> See 47 U.S.C. § 543 (l); 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> 47 U.S.C. § 543 (l)(1)(B); see also 47 C.F.R. § 76.905 (b)(2).

<sup>8</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>9</sup> Mediacom Petition (Grove City and Paynesville) at 4, Att. A.; Mediacom Petition (Cook) at 3-4; Mediacom Petition (Tyler) at 3-4; Mediacom Petition (Stewart, Winsted) at 3-4.

<sup>10</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (2006).

<sup>11</sup> See 47 C.F.R. § 76.905 (g); see also Mediacom Petition (Grove City and Paynesville) at 4; Mediacom Petition (Cook) at 4-5; Mediacom Petition (Tyler) at 4-5; Mediacom Petition (Stewart, Winsted) at 4-5.

<sup>12</sup> Mediacom Petition (Grove City and Paynesville) at 3; Mediacom Petition (Cook) at 3; Mediacom Petition (Tyler) at 3; Mediacom Petition (Stewart, Winsted) at 3.

5. The second prong of the competing provider test requires that the number of households subscribing to the MVPDs, not including the largest MVPD, exceed 15 percent of the households in a franchise area. The information provided by Mediacom illustrates that its subscribership in the Franchise Areas exceeds the aggregate total subscribership of the DBS and other MVPD providers, thus establishing it as the largest MVPD provider in the Franchise Areas.<sup>13</sup>

6. In an effort to prove the second prong of the competing provider test, which requires the MVPDs other than the largest MVPD to serve at least 15 percent of the households in the Franchise Areas, Mediacom purchased a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SCBA"). This report identified the number of subscribers attributable to the DBS providers within the Franchise Areas on a zip code+4 bases. Dividing those figures by the 2000 U.S. Census household data for each community, Mediacom calculated a DBS penetration rate in each Franchise Area of over 15 percent.<sup>14</sup>

7. Mediacom satisfied the first prong of the competing provider test, by demonstrating that the DBS providers offer comparable programming to at least fifty percent of households in each Franchise Area. In addition, Mediacom has satisfied the second part of the competing provider test by establishing that the DBS providers serve at least 15 percent of the households in each Franchise Area. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Franchise Areas are subject to competing provider effective competition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom Minnesota LLC for a determination of effective competition in Grove City, Paynesville, Cook, Tyler, Stewart and Winsted, Minnesota **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates of Grove City, Paynesville, Cook, Tyler, Stewart and Winsted, Minnesota **ARE REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

<sup>13</sup> Mediacom Petition (Grove City and Paynesville) at 6; Mediacom Petition (Cook) at 6; Mediacom Petition (Tyler) at 6; Mediacom Petition (Stewart, Winsted) at 6.

<sup>14</sup> Mediacom Petition (Grove City and Paynesville) at 6-7, Erratum at Exh. A,B,C (noting 49 subscribers out of 257 U.S. Census households in Grove City = 19.07 percent; 204 in Paynesville Township out of 510 = 40 percent; and in Paynesville City 182 subscribers out of 934 = 19.4 percent); Mediacom Petition (Cook) at 6, Erratum at Att. 1 (noting 50 subscribers out of 275 U.S. Census households = 18.18 percent); Mediacom Petition (Tyler) at 6, Erratum at Att. (noting 84 subscribers out of 532 U.S. Census households = 15.79 percent); Mediacom Petition (Stewart, Winsted) at 6, Erratum at Exh. A, B (noting 57 subscribers out of 241 U.S. Census households in Stewart = 23.65 percent and 133 subscribers out of 822 U.S. Census households in Winsted at 16.18 percent).

<sup>15</sup> 47 C.F.R. § 0.283.